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19 Attorneys for Plaintiff

20 Tessengerlo Kerley, Inc.

21 **UNITED STATES DISTRICT COURT FOR THE**

22 **NORTHERN DISTRICT OF CALIFORNIA**

23 **SAN FRANCISCO DIVISION**

24 **TESSENDERLO KERLEY, INC., a**

25 Delaware Corporation,

26 Plaintiff,

27 v.

**OR-CAL, INC., an Oregon Corporation,**

Defendant.

**CASE NO.: 3:11-CV-4100 (WHA)**

**AMENDED ANSWER TO  
OR-CAL'S COUNTERCLAIMS  
FOR DECLARATORY  
JUDGMENT**

Assigned to:  
The Honorable William H. Alsup

1 Plaintiff / Counter-Defendant Tessenderlo Kerley, Inc. ("TKI"), by and through its  
2 undersigned attorneys, hereby answers Defendant OR-CAL, Inc.'s ("OR-CAL") counterclaims,  
3 and any allegations related to the counterclaims, as amended by OR-CAL, as follows.

4 **COUNTERCLAIMS**

- 5 1. No answer is required to Paragraph 1.  
6 2. Admitted.  
7 3. Admitted.

8 **COUNT ONE**

9 **(Declaratory Judgment of Non-Infringement of the '867 Patent)**

10 4. TKI repeats, reasserts and incorporates by reference its answers to Paragraphs 1  
11 through 3 above, as if fully set forth herein.

- 12 5. Admitted.  
13 6. Admitted.  
14 7. Denied.

15 **COUNT TWO**

16 **(Declaratory Judgment of Non-Infringement of the '995 Patent)**

17 8. TKI repeats, reasserts and incorporates by reference its answers to Paragraphs 1  
18 through 7 above, as if fully set forth herein.

- 19 9. Admitted.  
20 10. Admitted.  
21 11. Denied.

22  
23 **COUNT THREE**

24 **(Declaratory Judgment of Invalidity of the '867 patent)**

25 12. TKI repeats, reasserts and incorporates by reference its answers to Paragraphs 1  
26 through 11 above, as if fully set forth herein.

- 27 13. Denied.  
28

**COUNT FOUR**

**(Declaratory Judgment of Invalidity of the '995 patent)**

14. TKI repeats, reasserts and incorporates by reference its answers to Paragraphs 1 through 13 above, as if fully set forth herein.

15. Denied.

**COUNT FIVE**

**(Declaratory Judgment of Unenforceability of the '867 patent)**

16. TKI repeats, reasserts and incorporates by reference its answers to Paragraphs 1 through 15 above, as if fully set forth herein.

17. Denied.

**COUNT SIX**

**(Declaratory Judgment of Unenforceability of the '995 patent)**

18. TKI repeats, reasserts and incorporates by reference its answers to Paragraphs 1 through 17 above, as if fully set forth herein.

19. Denied.

**TKI'S SEPARATE AFFIRMATIVE DEFENSES**

As a separate and distinctive affirmative defense to Count One through and including Count Six of OR-CAL's counterclaims and purported causes of action contained therein, and as to each of them, Counter-Defendant TKI alleges as follows:

**TKI'S FIRST AFFIRMATIVE DEFENSE**

**(Additional Defenses)**

Counter-Defendant TKI presently has insufficient knowledge or information upon which to form a belief whether it may have additional, unstated affirmative defenses. On that basis, Counter-Defendant TKI reserves the right to amend this Amended Answer to OR-CAL's Counterclaims for Declaratory Judgment to assert additional affirmative defenses in the event discovery indicates that additional affirmative defenses are appropriate.

**OR-CAL'S AFFIRMATIVE DEFENSES**

TKI denies the legitimacy of all of OR-CAL's Affirmative Defenses as originally pled and as amended by OR-CAL.

**ANSWER TO OR-CAL'S PRAYER FOR RELIEF**

TKI denies that OR-CAL is entitled to any relief from the Court.

**TKI'S PRAYER FOR RELIEF**

In addition to the relief requested in the Complaint, Plaintiff / Counter-Defendant TKI prays for judgment as follows:

A. For an order dismissing OR-CAL's counterclaims in their entirety with prejudice and denying all relief requested by OR-CAL;

B. For an order entering judgment in favor of Counter-Defendant TKI on each of the claims in the counterclaims;

C. For a declaration that by (i) making, having made, selling, and/or offering for sale, (ii) authorizing others to make, have made, sell, and/or offer for sale, and/or (iii) causing others to use the Mask and/or Diffusion products in the United States, OR-CAL contributes to and/or actively induces the infringement of the '867 patent;

D. For a declaration that by (i) making, having made, selling, and/or offering for sale, (ii) authorizing others to make, have made, sell, and/or offer for sale, and/or (iii) causing others to use the Mask and/or Diffusion products in the United States, OR-CAL contributes to and/or actively induces the infringement of the '995 patent;

E. For a declaration that the '867 patent and the '995 patent are each valid and enforceable; and

F. For such other further relief as this Court deems just and proper.

WHEREFORE, Plaintiff / Counter-Defendant TKI respectfully requests that all relief sought by OR-CAL in its counterclaims be denied in its entirety.

**JURY DEMAND**

TKI demands a trial by jury on all issues so triable.

STEPTOE & JOHNSON LLP

Dated: May 15, 2012

By: s/Seth A. Watkins

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TESSENDERLO KERLEY, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of May, 2012 (Pacific time), I electronically filed the foregoing **AMENDED ANSWER TO OR-CAL'S COUNTERCLAIMS FOR DECLARATORY JUDGMENT** with the clerk of court for the United States District Court for the Northern District of California using the electronic case filing system of the court, which in turn served the following attorneys of record for the defendant:

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Attorneys for OR-CAL, Inc.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

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s/Seth A. Watkins